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Inspira Medical Centers, Inc., Joseph Alessandrini and
Paul Abrams*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION**

THIS DOCUMENT RELATES TO:
All New Jersey Cases

Document Electronically Filed

MDL No. 1:13-md-2419-RWZ
MDL No. 02419

**DECLARATION OF STEPHEN A. GROSSMAN IN SUPPORT OF
INSPIRA HEALTH NETWORK, INC. AND INSPIRA MEDICAL CENTERS, INC.'S
MOTION FOR A PROTECTIVE ORDER PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 26(C)**

STEPHEN A. GROSSMAN, ESQ., of full age, hereby declares as follows:

1. I am a partner in the firm Montgomery, McCracken, Walker & Rhoads, LLP, located at LibertyView, Suite 600, 457 Haddonfield Road, Cherry Hill, New Jersey 08002, and counsel to Defendants Inspira Health Network, Inc. and Inspira Medical Centers, Inc. (formerly known as South Jersey Health System, Inc. and South Jersey Hospital, Inc.) and Joseph Alessandrini and Paul Abrams (collectively, "Inspira").

2. I am authorized to and make this Declaration in support of Inspira's Motion for a Protective Order Pursuant to Fed. R. Civ. P. 26(c).

3. On May 15, 2015, the Premier Defendants¹ served by email a Fed. R. Civ. P. 30(b)(6) deposition notice on Inspira seeking fifteen separate categories of information. The same day, Premier also served by email a deposition notice to depose Inspira employee Joseph Alessandrini, R.Ph. ("Deposition Notices").

4. On May 19, 2015, I had preliminary conversations with Christopher Wolk, Esq., counsel for the Premier Defendants, in person at the bankruptcy courthouse in Springfield, Massachusetts concerning the Deposition Notices.

5. On June 10, 2015 I, along with my colleague, Louis R. Moffa, Jr., Esq., met and conferred by telephone with Jay Blumberg, Esq. and Christopher Wolk, Esq., counsel for the Premier Defendants.

6. I advised counsel for the Premier Defendants that Inspira objected to the Deposition Notices for a number of reasons: (i) that the Premier Defendants were not entitled to the discovery in the 35 cases in which Inspira is not a defendant; (ii) that the bellwether cases almost certainly will include only those involving only the Premier Defendants, so discovery from Inspira would not be necessary at this time; and (iii) that discovery from Inspira was case specific and barred under MDL Order No. 9.

7. For these reasons, Inspira objected to the Deposition Notices at this time, although I made clear that these depositions may be appropriate at some future date once the bellwether protocol and selection was completed.

¹ The Premier Defendants, represented by the same law firm, include Premier Orthopaedic and Sports Medicine Associates of Southern New Jersey, LLC, trading as Premier Orthopaedic Associates, Premier Orthopaedic Associates Surgical Center, LLC, and Kimberley Yvette Smith, M.D., a/k/a Kimberley Yvette Smith-Martin, M.D., Thomas Dwyer, M.D., Richard C. DiVerniero, M.D., and Richard Strauss, M.D.

8. Counsel for the Premier Defendants advised that they were entitled to depose Inspira *now* in all cases based on the deposition testimony of Premier employee Michelle Cassidy. Ms. Cassidy allegedly testified that she obtained NECC's contact information from Inspira. She did not obtain any other information relating to NECC from Inspira.

9. Counsel for the Premier Defendants rejected Inspira's offer to revisit the Deposition Notices until the bellwether protocol and selection process was completed, which likely will be sometime in December 2015, and insisted on moving forward now with the Inspira depositions.

10. Based on the communications between counsel to date, because the parties are at an impasse, Inspira is forced file the within Motion for a Protective Order to protect Inspira from unnecessary discovery, cost, and expense.

11. Attached at **Exhibit A** is a true and correct copy of the relevant pages of Michelle Renee Cassidy's March 27, 2015 Deposition Transcript.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

s/ Stephen A. Grossman

Dated: June 22, 2015

CERTIFICATE OF SERVICE

I, **STEPHEN A. GROSSMAN**, hereby certify that I caused a true and correct copy of Inspira Health Network, Inc. and Inspira Medical Centers, Inc.'s Motion For A Protective Order Pursuant To Federal Rule Of Civil Procedure 26(c), accompanying Memorandum, Declaration of Stephen A. Grossman, Esq., and proposed form of Order, to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: June 22, 2015

s/ Stephen A. Grossman
Stephen A. Grossman

EXHIBIT A

NEW ENGLAND COMPOUNDING PHARMACY, INC. PRODUCTS LIABILITY
VIDEOTAPED DEPOSITION OF MICHELLE RENEE CASSIDY on 03/27/2015

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY,
INC. PRODUCTS LIABILITY MDL No. 2419
LITIGATION
Master Dkt:
1:13-md-02419-RWZ

~~~~~  
THIS DOCUMENT RELATES  
TO:

All Actions

~~~~~

VIDEOTAPED DEPOSITION OF
MICHELLE RENEE CASSIDY

8:56 a.m.
March 27, 2015

Suite 300
9000 Midlantic Drive
Mount Laurel, New Jersey

Blanche J. Dugas, RPR, CCR No. B-2290



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1 Q. And do you understand -- strike that.

2 What, if any, is your understanding of the
3 reasons for the use of both?

4 A. Well, I'm not a doctor, but my
5 understanding as to why they use MPA preservative-free
6 is because it was safer for the patient and if it has
7 preservatives in it and you use it for spine
8 procedures, the patient could have a chance of having
9 a stroke.

10 Q. Okay. And what is the basis or source of
11 that understanding that you just communicated to me?

12 A. That's what the physicians have told me.

13 Q. And which physicians told you that?

14 A. Dr. Smith.

15 Q. Now, you used the word "compounding
16 pharmacy." What is your understanding of what a
17 compounding pharmacy is?

18 A. A compounding pharmacy mixes drugs to make
19 medications that physicians aren't able to purchase
20 from the drug distributor.

21 Q. Now, when was it that you commenced your
22 employment with your present employer?

23 A. September of 2009.

24 Q. And what -- when you were hired in
25 September of 2009, for what job or position were you



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1 hired?

2 A. As the administrator of nursing for Premier
3 Orthopaedic Associates Surgical Center.

4 Q. And do I understand that you've held that
5 position throughout your tenure?

6 A. That's correct.

7 Q. And have you received raises during that
8 time?

9 A. Yes.

10 Q. And have you received bonuses?

11 A. Yes.

12 Q. Are you -- do you have a contract of
13 employment?

14 A. I signed a contract with Dr. Dwyer, yes.

15 Q. And when was that?

16 A. In September of 2009?

17 Q. And for -- was there a term for that
18 contract?

19 A. I don't recall. I'd have to look at it.

20 Q. Have you signed any additional contracts?

21 A. I have not.

22 Q. Do you have any current plans or intentions
23 of you leaving your employment?

24 A. I do not.

25 Q. From the time that you commenced your



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1 became a nurse in 2002.

2 Q. And when you worked -- strike that.

3 What did you do at Inspira prior to your
4 becoming a nurse?

5 A. I was a surgical tech in the operating
6 room.

7 Q. During the time that you worked for what we
8 know --we now reference -- refer to as Inspira, did
9 you have any contact or communications with anyone
10 whom you understood to be employed by NECC?

11 A. Can you repeat that.

12 Q. Sure. What I want to know is during the
13 time that you worked at what we now called Inspira --

14 A. Yeah.

15 Q. -- did you have any contacts or
16 communications with anyone at NECC?

17 A. I did not.

18 Q. Do you know whether or not anyone from NECC
19 ever came to Inspira?

20 A. I'm not aware of that.

21 Q. Do you know if -- strike that.

22 When you commenced your employment in
23 September of 2009 at Premier, was Premier using MPA
24 preservative-free purchased from NECC?

25 A. Can you repeat that.



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1 Q. Yes. Upon your arriving at your current
2 employment, did you find that your current employer
3 was already using NECC MPA preservative-free?

4 MR. BLUMBERG: Objection to form.

5 You can answer.

6 THE WITNESS: Our facility did not
7 open until January 2010, so there was no
8 Premier Orthopaedic Associates Surgical
9 Center at that time.

10 Q. (By Mr. Barrett) All right. The entity
11 that you were working for in September of 2009, what
12 was that?

13 A. Premier Orthopaedic Associates Surgical
14 Center.

15 Q. Okay. When you arrived there, were they
16 using NECC MPA preservative-free?

17 MR. BLUMBERG: Mike, it wasn't open
18 yet.

19 MR. BARRETT: I understand.

20 THE WITNESS: No. My answer is no.

21 Q. (By Mr. Barrett) When was the first time
22 that you learned that your current employer was using
23 NECC's MPA preservative-free?

24 A. At Inspira Healthcare. I worked there. I
25 worked in the operating rooms with the physicians and



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1 they were using New England Compounding MPA at the
2 hospital.

3 Q. Do you know whether any of the
4 physicians -- specifically Dr. Dwyer, Dr. Smith or Dr.
5 Perkins -- had any communications with anyone at NECC
6 prior to the recall?

7 A. Can you restate that.

8 Q. Yeah. I want to know if whether Dr. Dwyer,
9 Dr. Smith or Dr. Perkins had any communications with
10 anyone at NECC prior to the recall.

11 A. Not that I'm aware of.

12 Q. Who was it who decided to use the NECC MPA
13 preservative-free at Premier?

14 A. Medical advisory committee recommended it
15 and the managers approved it.

16 Q. And when was this?

17 A. Around about November 2009.

18 Q. And would you please explain for me that
19 process, as best you can recall.

20 A. So when I was working at the hospital, at
21 Inspira Healthcare, I worked with many physicians
22 there. I worked with Dr. Mitros who was an
23 anesthesiologist, pharmacist, pain management
24 physician, at the hospital. I asked him where they
25 were ordering the preservative-free MPA because we



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1 were, you know, in the process of opening the new
2 facility. He said they used New England Compounding.
3 He said I should call the hospital pharmacy to get the
4 information on where to place an order from. I called
5 the hospital pharmacy at Inspira Healthcare. They
6 recommended NECC, and so that's where they had been
7 ordering the preservative-free MPA for many years.

8 The physicians on the medical advisory
9 committee were submitting their preferences for the
10 facility. They wanted to continue using everything
11 they had been using at Inspira.

12 Q. Was there any attempt or effort to
13 investigate any other sources for the purchase of MPA
14 preservative-free?

15 A. At that time, no. The physicians were
16 comfortable using everything they had been using at
17 Inspira and wanted to continue to order from where
18 they were ordering from at the hospital.

19 Q. At any point in time between that time and
20 the recall, was there ever any consideration of using
21 any other facility to purchase MPA preservative-free?

22 A. There was not.

23 Q. Besides what you've told me, are you aware
24 of any investigation which was performed by you or
25 anyone else associated or affiliated with Premier



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1 Q. And what about Dr. Perkins? When did you
2 first meet her?

3 A. I met Dr. Perkins in 2012.

4 Q. Was there anyone who trained you in
5 connection with your current employment?

6 A. Yes.

7 Q. Who was that?

8 A. We have a management company, Murphy
9 Healthcare.

10 Q. When did that training occur?

11 A. Well, I met them in 2009. My official
12 start date was September of 2009. That's when I
13 started working with the clinical director at Murphy
14 Healthcare.

15 Q. And who was that?

16 A. Darlene DeCataldo.

17 Q. Are you aware of any relationship between
18 Murphy Healthcare and either of the Premier entities?

19 A. I don't understand your question.

20 Q. Are you aware if there is any financial
21 relationship between Murphy Healthcare and either of
22 the Premier entities?

23 A. Well, Murphy Healthcare is the management
24 company for Premier Orthopaedics Surgery Center.

25 Q. Who owns Murphy Healthcare?



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1 Q. And what does she do?

2 A. She -- well, in the beginning, she helped
3 get me set up, trained me how to do everything at the
4 facility. On the clinical aspect, she comes maybe
5 once or twice a week to the facility to make sure
6 everything's going smoothly and if we have any issues,
7 she'll address them.

8 Q. Does she work with anyone else at Premier
9 besides you?

10 A. Yes.

11 Q. Who else?

12 A. The physicians there, the staff at the
13 facility.

14 Q. What does she do with the physicians?

15 A. Well, if they have any issues or concerns
16 or have any questions, she can help them.

17 Q. Was Murphy in any way involved with the
18 purchase of medications by Premier?

19 A. Yes.

20 Q. How so?

21 A. Well, when we were starting up the
22 facility, they had contracts with different drug
23 distributors, they referenced to us places where we
24 could place orders from, where the other centers had
25 been ordering from.



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1 Q. Were they involved with the decision to
2 purchase MPA preservative-free from NECC?

3 A. Yes.

4 Q. How so?

5 A. Well, they met at the medical advisory
6 committees with us. They were aware we were ordering
7 from a compounding company.

8 Q. Were you present during any of those
9 meetings when that was discussed?

10 A. I was, yes.

11 Q. What is your recollection regarding that
12 discussion?

13 A. Well, in November 2009 before we opened, we
14 had to approve our drug formulary. So that was a list
15 of medications that the physicians and
16 anesthesiologists had been using or were requesting to
17 use at the facility along with the medications we
18 needed to start our open date, which was in January of
19 2010.

20 Q. Did they make any suggestions or
21 recommendations to order MPA preservative-free from
22 anyone other than NECC?

23 MR. BLUMBERG: "They" being --

24 MR. BARRETT: Murphy.

25 MR. BLUMBERG: -- Murphy Healthcare?



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1 Okay.

2 THE WITNESS: They did not. They
3 were comfortable using what the physicians
4 were comfortable using at the hospital.

5 Q. (By Mr. Barrett) Why do you say that?

6 A. Because the physicians at our facility
7 wanted to continue using the items that they had been
8 using at the hospital. They had been using items
9 there for a long time. They asked me to contact
10 whoever did the ordering at the hospital to continue
11 ordering the same products. So since the physicians
12 were comfortable using the same medications, the
13 management company was comfortable with that as well.

14 Q. Did you undertake any independent
15 investigation of NECC?

16 MR. BLUMBERG: Objection, asked and
17 answered. You can answer it.

18 THE WITNESS: I don't understand the
19 question.

20 Q. (By Mr. Barrett) Did you perform any
21 investigation of NECC in connection with the decision
22 to continue to purchase MPA preservative-free from
23 NECC?

24 A. I did, yes. I spoke Dr. Mitros, who is the
25 pharmacist, anesthesiologist and pain management



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1 physician who has been using it for many years. He
2 had no nothing -- no issues or concerns or negative
3 things to say. He recommended the facility. I also
4 spoke to Inspira Healthcare pharmacy. I asked them
5 where they were ordering the MPA preservative-free
6 from. They were comfortable giving me the
7 recommendation of NECC and we continued to order it
8 from there.

9 Q. Did you ever speak with anyone at NECC?

10 MR. BLUMBERG: Wait a minute. Before
11 the decision was made or ever?

12 Q. (By Mr. Barrett) Let me put a time frame
13 on it. In connection with the decision to continue to
14 use NECC for the MPA preservative-free, did you ever
15 speak with anyone there?

16 A. Yes.

17 Q. Who did you speak with?

18 A. Well, after I obtained their contact
19 information from Inspira Healthcare pharmacy, I called
20 New England Compounding and I spoke to a drug
21 representative named Linda Pino.

22 MR. COREN: Can you say that a little
23 louder.

24 THE WITNESS: Yes. Linda Pino at New
25 England Compounding. She's a drug rep



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1 hospital?

2 Q. (By Mr. Rehnquist) Yes. If that's -- yes.

3 A. I'm not aware. There was more than one
4 hospital. I don't know how many surgeons were there.

5 Q. You mentioned -- was the hospital called
6 South Jersey Healthcare or were there multiple
7 hospitals?

8 A. There was South Jersey Healthcare - Elmer.
9 South Jersey Healthcare Regional Medical Center. Two
10 of them.

11 Q. Two separate hospitals at that time?

12 A. At that time, yeah.

13 Q. And you mentioned a Dr. Mitros, I believe?

14 A. Dr. Mitros.

15 Q. Dr. Mitros. How do you spell that?

16 A. M-I-T-R-O-S.

17 Q. And what was his position within the South
18 Jersey Healthcare network?

19 A. He was chief of anesthesia. At that time
20 he was an anesthesiologist at the hospital.

21 Q. And I believe you said that he was one of
22 the people that you consulted about a source for
23 preservative-free MPA; correct?

24 A. Yes.

25 Q. And what did he tell you?



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1 MR. BLUMBERG: Objection, asked and
2 answered, but you can answer it again.

3 THE WITNESS: He told me that the
4 hospital was ordering it from New England
5 Compounding, that it was preservative-free
6 MPA, to call the pharmacy to get the
7 contact information.

8 Q. (By Mr. Rehnquist) Okay. And you went
9 ahead and you did call the pharmacy; correct?

10 A. I did, yes.

11 Q. And was this an in-house pharmacy at one of
12 the hospitals that you mentioned?

13 A. Yes.

14 Q. Which hospital?

15 A. South Jersey Healthcare Regional Medical
16 Center.

17 Q. And did you understand that that hospital
18 had its own in-house pharmacy that it used for drugs
19 for the patients at the hospital?

20 A. Yes.

21 Q. And who did you talk to at the hospital
22 pharmacy?

23 A. I don't recall the specific name.
24 Typically when I called the pharmacy, it would be a
25 pharmacy tech on the phone.



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1 Q. And all you remember is just asking this
2 person for a name and address?

3 A. I asked them where they ordered their
4 preservative-free compounding medications from.

5 Q. Did the in-house pharmacy at the hospital
6 do any of its own compounding, to your knowledge?

7 A. That, I'm not aware of.

8 Q. Before you came to the Premier surgery
9 center, did you have any experience with compounding
10 pharmacies yourself?

11 A. Well, while I worked at the hospital, we
12 used New England Compounding medication.

13 Q. Putting aside -- let me try a better
14 question.

15 A. Okay.

16 Q. Before you had dealings with New England
17 Compounding Company, did you have any experience
18 dealing with any other compounding pharmacies?

19 A. I did not.

20 Q. Did all the doctors who formed the Premier
21 physicians group come from South Jersey Healthcare?

22 MR. BLUMBERG: Now we're talking
23 about the orthopaedic group as opposed to
24 the surgery center?

25 MR. REHNQUIST: That's right. I



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